

COMMONWEALTH OF MASSACHUSETTS

COURT DEPARTMENT

_____, ss.

Docket No. _____ DIVISION

In re: Commitment of)	
)	
JOHN DOE)	MOTION <u>IN LIMINE</u> TO EXCLUDE
)	OPINION TESTIMONY CONCERNING
)	FUTURE DANGEROUSNESS

Now comes RESPONDENT, John Doe, and moves this Honorable Court to (1) exclude opinion testimony as to the "likelihood of serious harm" should he be discharged, and (2) limit the testimony of PETITIONER'S putative expert to those facts within her personal knowledge and to otherwise admissible information in her possession which may be pertinent to an assessment of RESPONDENT'S future dangerousness.

As reasons therefor, RESPONDENT asserts that

1. Opinion testimony, in general, and psychiatric and/or psychological opinion testimony, in particular, is admissible in order to assist the Court only where the theory or process underlying the opinion is reliable. Commonwealth v. Lanigan, 419 Mass. 15, 24 (1994).
2. Predictions of future behavior are not sufficiently reliable as to permit a psychiatrist or psychologist to form an opinion, with a reasonable degree of clinical certainty, as to the likelihood of serious harm should RESPONDENT be discharged.

3. In order to determine the reliability of proffered opinion testimony, the Court must assess "whether the reasoning or methodology underlying (such) testimony is scientifically valid and [...] whether that reasoning or methodology properly can be applied to the facts in issue." Lanigan, 419 Mass. at 26, quoting Daubert v. Merrell Dow Pharmaceuticals, Inc., 113 S.Ct. 2786, 2796 (1993).
4. A significant, if not the only, issue in making such an assessment is whether the scientific principle underlying the foundation of the proffered opinion is sufficiently established so as to have general acceptance within the pertinent professional community. Lanigan, 419 Mass. at 26.
5. The ability of psychiatrists and psychologists to evaluate and predict whether a particular person is likely to pose a substantial risk of physical harm to himself or others, or a very substantial risk of physical impairment or injury to himself, (the criteria for commitment under G.L. c. 123) is not generally accepted within the psychiatric and psychological communities. See, e.g., Standard 7-3.9, A.B.A. Criminal Justice Mental Health Standards, American Bar Association (1989)(copy attached); and Ziskin, J. and Faust, D., Coping with Psychiatric and Psychological Testimony. 4th Ed., Los Angeles: Law and Psychology Press, pp. 413-419 (1988), and studies cited therein.
6. The most recent data suggest that in little more than one out of two cases (53.8% for women; 52.8% for men) are experienced forensic psychiatrists and psychologists able to accurately predict that a particular person will be violent. Lidz, et al, "The Accuracy of Predictions of Violence to Others," Journal of the American Medical Association, pp. 1007-1011 (2/24/93)(copy attached).

7. Thus, it cannot reasonably be argued that the Court will benefit from such opinion testimony. The Court is as likely to arrive at an accurate prediction of RESPONDENT'S future "dangerousness" by flipping a coin as by accepting the opinion of PETITIONER'S putative expert.
8. The probative value, if any, of PETITIONER'S putative expert's opinion as to the likelihood of serious harm is far outweighed by its prejudicial impact. See, e.g., People v. Murtishaw, 29 Cal. 3d 733 (1981).
9. By limiting the testimony of PETITIONER'S putative expert to those facts within her personal knowledge and to otherwise admissible information in her possession which she believes may be pertinent to an assessment of RESPONDENT'S future dangerousness, the Court will have the benefit of the very same facts and information upon which PETITIONER'S putative expert may have properly relied in forming her opinion. DYS v. A Juvenile, 398 Mass. 516 (1986).